defining an opening therethrough to receive instrumentation, the distal end portion configured for insertion at least partially into an intervertebral space between adjacent opposed vertebrae and having two spaced apart retractor arms, each retractor arm including first and second supporting surfaces laterally displaced with respect to each other and to the longitudinal axis;

distracting the adjacent vertebrae by at least partially inserting the retractor arms of the retractor within the intervertebral space whereby the first supporting surface of each retractor arm engages one vertebrae and the second supporting [surfaces] surface of each retractor arm [respectively engage] engages the other vertebrae such that [and laterally displace] the adjacent opposed vertebrae are laterally displaced; and

performing the surgical spinal procedure.

C1

2/3. (Amended) The method according to claim 2/1 wherein the step of performing [the surgical spinal procedure] includes introducing surgical instrumentation within the opening of the surgical retractor, the surgical instrumentation being utilized to perform the surgical procedure.

C2

13/14. (Amended) The surgical retractor according to claim 12/11 wherein each retractor arm has a tapered end portion for facilitating insertion into the [intervertebral space] tissue portions.

C3

25

14 ~~15~~. (Amended) A surgical retractor for use in distracting adjacent vertebrae having an intervertebral space defined therebetween, the retractor comprising:

an elongate sleeve body having a proximal end and a distal end and defining a longitudinal passageway therebetween; and

first and second retractor arms extending longitudinally from the distal end of the elongate sleeve body, each retractor arm defining a first vertebra supporting surface to contact a first vertebra and a second vertebra supporting surface to contact a second vertebra, the first and second vertebra supporting surfaces of each retractor arm being spaced [thereon at] a predetermined distraction distance at least equal to the height of the intervertebral space defined between the adjacent vertebrae.

17 ~~18~~. (Amended) A surgical retractor for use in distracting adjacent vertebrae, comprising:

an elongate body having a proximal end and a distal end and defining a longitudinal passageway therebetween, the elongate body defining a longitudinal axis; ~~and~~

first and second retractor arms extending longitudinally from the distal end of the elongate body, each retractor arm defining a first vertebra supporting surface and a second vertebra supporting surface, the first and second vertebra supporting surfaces of each retractor arm being spaced [thereon at] a predetermined [distraction] distance [and] sufficient to contact the adjacent vertebrae to be in supporting engagement therewith, the first and second vertebra support surfaces being in general parallel relation with each other and to the longitudinal axis of the elongate body.

26

18 19. (Amended) A [The] surgical retractor [according to claim 15 wherein] for use in distracting adjacent vertebrae, the retractor comprising:

an elongate sleeve body having a proximal end and a distal end and defining a longitudinal passageway therebetween, the elongate sleeve body [includes] including at least one longitudinal opening in an intermediate wall portion; and

first and second retractor arms extending longitudinally from the distal end of the elongate sleeve body, each retractor arm defining a first vertebra supporting surface to contact a first vertebra and a second vertebra supporting surface to contact a second vertebra, the first and second vertebra supporting surfaces of each retractor arm being spaced thereon at a predetermined distraction distance.

C6

24 27. (Amended) A surgical retractor instrument comprising an elongated sleeve member including proximal and distal end portions and defining a longitudinal axis, the elongated sleeve member defining a longitudinal passageway for reception of surgical instrumentation, the distal end portion having first and second stationary retractor arms extending in a general longitudinal direction, [the] each retractor arm [arms being] having opposed distracting surfaces, the distracting surfaces of each retractor arm laterally spaced with respect to the longitudinal axis at a predetermined distraction distance sufficient to distract the opposed tissue portions upon insertion thereof.

C7

D5 D4

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27

Please add the following new claims:

--28. (New) The surgical retractor according to claim 15 wherein the distraction distance of each retractor arm is greater than the height of the intervertebral space.

29. (New) The surgical retractor according to claim 27 wherein the distal end portion is dimensioned for insertion within the intervertebral space defined between adjacent vertebrae and wherein the distraction distance defined between the opposed distracting surfaces of each retractor is at least equal to the height of the intervertebral space.--

REMARKS

The present Amendment is submitted in response to the Office Action mailed September 9, 1998. The claims have been amended in a manner which is believed to overcome the rejections contained in the Office Action. Withdrawal of the rejections is respectfully requested and allowance of the pending claims is earnestly solicited.

Applicants appreciate the indication of allowability of claims 5-11 and 22-26 and the indication of allowable subject matter of claim 19. By this Amendment, claim 19 has been amended to independent form to include the limitations of the base and intervening claims..

Claims 2-4 stand rejected under 35 U.S.C. §102(b) by U.S. Patent No. 3,486,505 to Morrison. Applicants respectfully submit that the present invention as claimed is patentably distinguishable from Morrison '505 and is allowable thereover. For example,